

Newcastle City Council
Deferred Payment Scheme
Effective from 1 April 2015

1. Introduction and Legal Status

1.1 The Care Act 2014 (section 34-36) establishes a universal deferred payment scheme, which means that from April 2015, people may not need to sell their home in their lifetime to pay for the costs of care. A deferred payment is a way of deferring the costs of care against a property which is the person's main home. It is a loan against the value of the property.

1.2 From April 2015, all councils in England are required to provide a deferred payment for local residents who go to live in residential or nursing care, own a property and have assets below a certain amount. They must also have assessed care needs for residential or nursing care.

1.3 Payment for care and support under this scheme is deferred, not 'written off'. The costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date.

1.4 People can choose to use a deferred payment agreement as a bridging loan, should they have decided to sell their property, or as a long-term loan to delay or avoid having to sell their home in lifetime.

2. Eligibility Criteria

2.1 The Care and Support (Deferred Payment) Regulations 2014 has set out national eligibility criteria for people wanting to access the deferred payment scheme. If a person meets all of the following criteria and are able to provide adequate security, we will offer a DPA.

The eligibility criteria are:-

- a) Anyone whose needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which we decide should be met through a care home placement. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences;
- b) Anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- c) Anyone whose home is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e someone whose home is taken into account in the local authority financial assessment and so might need to be sold).

2.2 Additionally to this criteria, the service user must have a beneficial interest in the property, there should be no outstanding mortgage on the property (or if

accepting a mortgaged property, the outstanding amount must leave sufficient value to meet the criteria for self-funding) and the service user or their legal representative must consent to the agreement.

2.3 The deferred payment must be signed by a person with capacity to make the decision or their legal representative. This representative must hold EPA/LPA or deputyship in respect of the service user.

2.4 In addition, we will consider DPAs in the following circumstances and subject to them paying contributions as required from the date of the DPA being signed:

-for service users in receipt of non-residential services who own a second property; and

-for service users who have accrued debt from non-residential services and are not in a position to repay this immediately, as long as adequate security can be obtained.

3. Refusing a deferred payment agreement

3.1 In the following circumstances, we may refuse a DPA, despite the eligibility criteria being met:

- a) Where we are unable to secure the first charge on the property. A second charge may be accepted, depending on the level of outstanding mortgage
- b) Where someone chooses a placement with a top-up fee, leading to an unsustainable debt
- c) Where a person does not agree to the terms and conditions of the agreement,

3.2 In any of the above circumstances, we will consider exercising our discretion to offer a deferred payment anyway. For example if the property is uninsurable but has a high land value, we may choose to accept charges against the land as security instead.

4. Circumstances in which local authorities may stop deferring care costs

4.1 There are circumstances where we may refuse to defer any more charges for a person who has an active DPA. We will not demand repayment in these circumstances, and repayment is still subject to the usual terms of termination, as set out in the section entitled 'Terminating the agreement' below.

4.2 We will provide a minimum of 30 days advance notice that further deferrals will cease, and at this time will provide an indication of how the care costs will need to be met in the future. Depending on their circumstances, the person may either

receive local authority support in meeting the costs of their care, or may be required to meet the costs from their income and assets.

4.3 Circumstances where we may refuse to defer any further charges include:

- a) Where a person's total assets fall below the upper capital limit, and the person becomes eligible for local authority support in paying for their care
- b) Where a person no longer has need for care in a care home (or where appropriate supported living accommodation)
- c) If a person breaches the terms of their contract and the local authority's attempts to resolve the breach are unsuccessful

4.4 We must cease deferring further amounts when a person has reached the 'equity limit' that they are allowed to (see 'how much can be deferred' below). This also applies when the value of the security has dropped and so the equity limit has been reached earlier than expected.

5. Information and Advice

5.1 We will ensure that people are able to make well-informed choices, by providing appropriate information and advice before taking out a deferred payment agreement. We will also ensure that people are kept informed about their deferred payment agreement throughout the course of the agreement, and that they (and the executor of their estate where appropriate) receive the necessary information upon termination of the agreement.

5.2 We will provide information in a way which is clear and easy to understand, and is designed to ease the process of transition for people, their carers and their families.

5.3 We will ensure that, as appropriate, carers and/or families are invited to participate in discussions.

5.4 We will provide them with all the information that would otherwise be given to the person with care and support needs (if they have capacity) or someone else with appropriate authorisation. In doing this, we will also ensure compliance with mental capacity and data protection legislation, and the other duties pertaining to information and advice set out in the Care Act guidance.

5.5 As a deferred payment can take some time to set up and agree, it is important that both we and the individual consider any potential issues around mental capacity. Where a person may lack capacity to agree to a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf. If a family member requests a deferred payment and they do not have a legal power to act on behalf of

the person, then the person and the family member will receive information and advice on how to obtain this, through Lasting Power of Attorney and Deputyships. We will not enter into a deferred payment agreement with a person lacking the requisite mental capacity unless the proper arrangements are in place.

5.6 We will agree to pay a deferred amount prior to legal capacity being achieved if we are in receipt of a signed letter of agreement (appendix 1). Alternatively a letter from a solicitor who is processing the authority application would suffice.

5.7 We will provide all the relevant information in formats which comply with the Equality Act 2010, and will ensure that this information is accessible for all.

5.8 Where relevant, we will aim to provide information and advice on DPAs at the earliest opportunity during the 12 week disregard period. As far as possible we will aim to have the DPA available from the first day of week 13.

6. How much can be deferred

6.1 A person should be able to defer the entirety of their care costs, subject to any contribution the person has been financially assessed to pay from their income and to adequate security being obtained.

6.2 Three elements will dictate how much a person can defer:-

- a) The amount of equity a person has available in their property
- b) The amount a person is contributing to their care costs from other sources, including income (including rental income); and where they choose to, any contribution from savings, a financial product or a third-party
- c) The total care costs a person will face, including any top-ups the person might be seeking.

6.3 If a person is considering a top-up, we will be required to consider whether the amount or size of the deferral requested is sustainable, given the equity within the property.

7. Equity limit

7.1 The total amount that can be deferred under a DPA will be set at the value of the property, less 10%, less the lower capital limit/£14,250, less any other debts secured against the property.

7.2 When the deferred amount reaches 70% of the equity available, we will review the cost of the care with the service user/financial representative, and will

discuss when eligibility for funding may be reached and the implications for any top-up that they might have.

8. Contributing to care costs from other sources

8.1 A person may meet the costs of their care from a combination of any of four primary sources:

- a) Income
- b) Savings or other assets, including any contributions from a third party, i.e. a top-up fee or a charitable payment
- c) A financial product designed to pay for long-term care
- d) A deferred payment agreement

8.2 We will require a contribution towards care costs from a person's income, but will allow a proportion of the income to be retained. Up to £144 per week will be allowed to be retained, to be used towards the upkeep of the property.

8.3 A person can choose to keep less of their income than the disposable income allowance (DIA). This would result in them contributing more to their care costs and consequently reduce the amount that is being deferred.

8.4 If a person rents out their property during their DPA, we will allow 20% of the rental income to be disregarded from their contribution. The remaining 80% will form part of the assessed contribution. The rental income disregard will be allowed on top of the DIA.

9. Sustainability

9.1 When deciding on the amount to be deferred, the following factors will need to be considered:

- a) The likely period the person would want a DPA for (if they intend to use it as a bridging loan)
- b) The equity available
- c) The sustainability of a person's contributions from their savings (if they are making one)
- d) The flexibility to meet future care needs
- e) The period of time a person would be able to defer their care costs for

9.2 The amount to be deferred will be clearly and unambiguously set out in the deferred payment agreement. This will be reviewed on a regular basis to ensure the deferred amount does not exceed the equity limit.

9.3 To ensure the deferral is sustainable, local authorities have discretion over the amount people are permitted to top-up. We will consider any request for top-ups, but retain discretion over whether or not to agree to a given top-up.

10. Obtaining security

10.1 A local authority must have adequate security when entering into a deferred payment agreement. The regulations set out one form of security that local authorities must accept, and also provide wider discretion for local authorities to accept other forms of security as they see fit.

10.2 We will accept a first charge against the property on the Land Register, providing the eligibility criteria is met.

10.3 In cases where an agreement is to be secured with a jointly-owned property, we will require both owners' signed agreement to a charge being placed on the property.

10.4 Under the discretionary scheme, local authorities have discretion to decide what else may constitute 'adequate security', in cases where a first legal charge cannot be secured. We will consider alternative forms of security, however we have discretion in individual cases to refuse a deferred payment agreement if we are not satisfied that adequate security is in place.

11. Interest rate and administration charge

11.1 The deferred payment scheme is intended to be run on a cost-neutral basis, with local authorities able to recoup the costs associated with deferring fees by charging interest. We will also recoup the administrative costs associated with DPAs, including legal and ongoing running costs.

11.2 Administration charges and interest can be added on to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose.

11.3 Interest will be charged on any amount deferred, including an administration charges that are deferred. This is to cover the cost of lending and risks to the council associated with lending, for example the risk of default.

11.4 Where interest is charged, it will be based on the nationally-set maximum interest rate, and will be charged on all deferred payments within Newcastle City Council.

11.5 The national maximum interest rate will change every six months on 1st January and 1 July, to track the market gilt rates specified by the Office of Budget Responsibility. We will ensure that the any changes to the national maximum rate are applied to all agreements.

11.6 We will inform people before they make the agreement that if interest will be charged, what interest rates are currently set at, and when interest rates are likely to change.

11.7 The interest charged and added to the deferred amount will be compounded on a daily basis, and we will ensure when making the agreement that individuals understand that this will accrue on a compound basis.

11.8 Interest will continue to accrue on the amount deferred even once someone has reached the 'equity limit'. It will also accrue after someone has died up until the point at which the deferred amount is repaid to the Local Authority.

11.9 We will set the administration charge at a reasonable level, and this will not be more than the actual costs we incur in the provision of the universal deferred payments scheme, as set out in the regulations. Relevant costs will include (but are not limited to) the costs we incur whilst:

- a) Registering a charge with the Land Registry against the title of the property, including Land Registry searches and any identity checks required
- b) Undertaking relevant postage, printing and telecommunications
- c) Our time whilst providing the service
- d) Valuing and re-valuing the property
- e) Removing legal charges against the property
- f) Overheads, including where appropriate (shares of) payroll, audit, management costs, legal service.

11.10 A list of administration charges that a person will be liable to pay will be made available on the council website, and also on request. (See appendix 2)

12. Terminating the agreement

12.1 A deferred payment agreement can be terminated in three ways:

- a) At any time by the individual, or someone acting on their behalf, by repaying the full amount due (this can happen during a person's lifetime or when the agreement is terminated through the DPA holder's death)
- b) When the property (or form of security) is sold and the authority is repaid; or
- c) When the person dies and the amount is repaid to the LA from their estate.

12.2 On termination, the full amount due (including care costs, any interest accrued and any administrative or legal fees charged) must be paid to the local authority within 90 days.

12.3 If a person decides to sell their home, they should notify us during the sale process. They will be required to pay the amount due to the local authority from the proceeds of the sale, and we will be required to relinquish the charge on their property.

12.4 A person may decide to repay the amount due to us from another source or a third party may elect to repay the amount due on behalf of the individual. In either case, we should be notified of the person's/the third party's intention in writing, and we must relinquish the charge on the property on receipt of the full amount due.

12.5 If the deferred payment is terminated due to the person's death, the amount due to the local authority must be either paid out of the estate or paid by a third party. A person's family or a third party may wish to settle the debt to the local authority by other means of repayment and the local authority must accept an alternative means of payment in this case, provided the payment covers the full amount due to the local authority.

12.6 The executor of the will or Administrator of the Estate can decide how the amount due is to be paid; either from the person's estate (e.g. via the house sale or life assurance policy) or from a third party source.

12.7 We will wait at least two weeks following a person's death before approaching the executor, at that point a full breakdown of the total amount deferred will be provided.

12.8 Responsibility for arranging repayment of the amount due (in case of payment from the estate) falls to the executor of the will.

12.9 Interest will continue to accrue on the amount owed to the local authority after the individual's death and until the amount due to the local authority is repaid in full.

12.10 If terminated through death, the amount owed to the local authority under a DPA will be due 90 days after the person has died. After this 90 day period, if we conclude that active steps are not being taken to repay the debt, for example if the sale is not progressing or the sale is being obstructed, we will enter legal proceedings to reclaim the amount due.

12.11 In whichever circumstances an agreement is terminated, the full amount due to the local authority must be repaid to cover all costs accrued under the agreement, and the person (or third party where appropriate) will be provided with a full breakdown of how the amount due has been calculated.

12.12 Once this has been repaid, we will provide confirmation that the agreement has been concluded and confirm (where appropriate) that the charge against the property has been removed.

Appendix 1 – List of fees

One-off charge, includes set-up and closure of DPA	£500.00
Legal disbursements	up to £49.00
Annual reconciliation, plus statement	£35.00
6 monthly statement (interest rate rise)	£15.00

Appendix 2 – Letter of agreement



The person dealing with this matter is:

Naomi Hall

Newcastle City Council

Room 135, Civic Centre

Barras Bridge

Newcastle upon Tyne, NE1 8QH

Address
Address
Address
Postcode

Date

Our reference: NJH/.....

Your reference:

If you need this information in another format or language please contact the sender.

Dear (name)

Name of resident, home

Further to our discussion last week, please find below confirmation that Newcastle City Council will re-start paying the balance of fees to (care home), whilst you wait for the Court of Protection to be finalised. Please find attached a statement for you to sign and return to me, confirming that you are happy for the Local Authority to recover this amount once the property has been sold.

The gross weekly fees are (£..), although this may change due to our contract. We will pay (£...) per week, and you should continue to pay (name of person) financially assessed charge of (£...) per week.

Please contact me as soon as you receive the Court of Protection document so that we can discuss the next actions, and arrange for the Advance on Property application to be completed.

Please contact me if you need any more information.

Yours sincerely

Naomi Hall
Senior Finance Officer, Charging

STATEMENT

I agree that Newcastle City Council will pay the balance of (name of person) fees to (care home) while the Court of Protection is finalised.

Once this is in place, the Advance on Property will be applied for and the property at (person's home address) will be put up for sale.

Following the sale of the property, these fees will be repaid.

(£...) per week will be paid as the Local Authority's contribution towards the fees.

Signed _____ Dated _____